

REMARKS

This is in response to the Office Action mailed November 2, 2009. As an initial matter, applicants would like to express their appreciation for the telephone interview granted by the Examiner to the undersigned attorney for applicants on October 30, 2009. During the interview, the Declarations filed under 35 CFR §1.131 were discussed in light of applicants' response dated October 8, 2009 and the Examiner indicated that the rejection under 35 USC §102(e) based on Ray et al. (US Pub. No. 2002/0183848) was overcome. In addition, the Examiner noted that certain terms in claim 41 appeared to lack antecedent basis, which are addressed in the Office Action and by the present amendment. In addition, the Examiner requested a Supplemental Declaration for Reissue which is supplied herewith.

Claims 41, 42 and 49 have been amended herein to address the rejection of claims 40-51 under 35 USC § 112, second paragraph. The amendments to the claims are made to address matters of antecedent basis or to clarify a potential ambiguity. In claim 41, line 2, "defining" has been deleted in favor of "having" since a cavity is empty space and may arguably not "define" a height. At line 8 of claim 41, the term "a second height" was actually intended to refer to "the" second height referred to earlier in the claim and has been amended accordingly. The term "the relative capacity" was without antecedent basis and further, the term "relative" was deemed to be vague and unnecessary. Accordingly, it was agreed during the interview that "a capacity" is a more suitable designation. The last line of claim 41 is amended to more to more clearly indicate swelling capacity along the length of the horizontal axis as recited. Claim 42 is amended to delete "relative" to be

consistent with claim 41. The penultimate line of claim 49 is amended to correct the inadvertent omission of the term "implant".

A good faith effort has been made to place the present application in condition for allowance. If there is any point requiring discussion prior to allowance, the Examiner is earnestly solicited to telephone the undersigned attorney for Applicants at the address below.

Respectfully submitted,



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Attachments